

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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May 2, 1996

SECRETARY OF LABOR, : CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH :
ADMINISTRATION (MSHA), : Docket No. WEST 95-193
Petitioner : A.C. No. 42-01697-03675
 :
v. :
 : Bear Canyon #1
C.W. MINING COMPANY, :
Respondent :

DECISION

Appearances: Robert Cohen, Esq., Office of the Solicitor,
U.S. Department of Labor, Arlington, Virginia,
for Petitioner;
Carl E. Kingston, Esq., Salt Lake City, Utah,
for Respondent.

Before: Judge Cetti

This case is before me upon a petition for assessment of civil penalties under section 105(d) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. the "Act." The Secretary of Labor on behalf of the Mine Safety and Health Administration, (MSHA), charges the Respondent, C.W. Mining Company, the operator of Bear Canyon #1 Mine, with the violation of a respirable dust violation of the regulatory safety standard 30 C.F.R. § 70.100(a).

The single citation at issue describes the violation as follows:

Based on the results of five valid dust samples collected by the operator, the average concentration of respirable dust in the working environment of the designated occupation code 036 in mechanized mining united 003-0 was 1.9 milligrams which exceeded the applicable limit of 1.2 milligrams. Management shall take corrective actions to lower the respirable dust and then sample each production shift until five valid samples are taken and submitted to the Pittsburgh Respirable

Dust Processing Laboratory. Approved respiratory equipment shall be made available to all persons working the area.

At the hearing, counsel for the Secretary stated that an older continuous miner, MMU 003-0, was operating under a reduced respirable dust level of 1.2 milligrams of respirable dust per cubic meters of air. The operator placed this older machine in a non-producing status and it was later scrapped. A new continuous miner was purchased and the new machine was also designated as MMU 003-3. MSHA inadvertently assigned the reduced standard of the old machine, MMU 003-0, to the new machine. The new machine should have been operating on a 2.0 milligrams or respirable level per cubic meters of air and not on the old reduced standard of 1.2 milligrams applicable to the old machine. When the operator sent in his samples on the new mechanized unit 003-3, the average concentration of respirable dust was 1.9 milligrams which was above the 1.2 milligrams standard which had erroneously been assigned to the new machine but within the correct 2.0 milligrams standard.

Thus, it was clear that the citation was issued in error. Consequently Citation No. 9997061 is vacated.

ORDER

Citation No. 9997061 is **VACATED** and this case, Docket No. WEST 95-193 is **DISMISSED**.

August F. Cetti
Administrative Law Judge

Distribution:

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